

1 THE HONORABLE BARBARA J. ROTHSTEIN
2
3
4
5
6

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
5510
5511
5512
5513
5514
5515
5516
5517
5518
5519
5520
5521
5522
5523
5524
5525
5526
5527
5528
5529
5530
5531
5532
5533
5534
5535
5536
5537
5538
5539
55310
55311
55312
55313
55314
55315
55316
55317
55318
55319
55320
55321
55322
55323
55324
55325
55326
55327
55328
55329
55330
55331
55332
55333
55334
55335
55336
55337
55338
55339
55340
55341
55342
55343
55344
55345
55346
55347
55348
55349
55350
55351
55352
55353
55354
55355
55356
55357
55358
55359
55360
55361
55362
55363
55364
55365
55366
55367
55368
55369
55370
55371
55372
55373
55374
55375
55376
55377
55378
55379
55380
55381
55382
55383
55384
55385
55386
55387
55388
55389
55390
55391
55392
55393
55394
55395
55396
55397
55398
55399
553100
553101
553102
553103
553104
553105
553106
553107
553108
553109
553110
553111
553112
553113
553114
553115
553116
553117
553118
553119
553120
553121
553122
553123
553124
553125
553126
553127
553128
553129
553130
553131
553132
553133
553134
553135
553136
553137
553138
553139
553140
553141
553142
553143
553144
553145
553146
553147
553148
553149
553150
553151
553152
553153
553154
553155
553156
553157
553158
553159
553160
553161
553162
553163
553164
553165
553166
553167
553168
553169
553170
553171
553172
553173
553174
553175
553176
553177
553178
553179
553180
553181
553182
553183
553184
553185
553186
553187
553188
553189
553190
553191
553192
553193
553194
553195
553196
553197
553198
553199
553200
553201
553202
553203
553204
553205
553206
553207
553208
553209
553210
553211
553212
553213
553214
553215
553216
553217
553218
553219
553220
553221
553222
553223
553224
553225
553226
553227
553228
553229
553230
553231
553232
553233
553234
553235
553236
553237
553238
553239
553240
553241
553242
553243
553244
553245
553246
553247
553248
553249
553250
553251
553252
553253
553254
553255
553256
553257
553258
553259
553260
553261
553262
553263
553264
553265
553266
553267
553268
553269
553270
553271
553272
553273
553274
553275
553276
553277
553278
553279
553280
553281
553282
553283
553284
553285
553286
553287
553288
553289
553290
553291
553292
553293
553294
553295
553296
553297
553298
553299
553300
553301
553302
553303
553304
553305
553306
553307
553308
553309
553310
553311
553312
553313
553314
553315
553316
553317
553318
553319
553320
553321
553322
553323
553324
553325
553326
553327
553328
553329
553330
553331
553332
553333
553334
553335
553336
553337
553338
553339
5533310
5533311
5533312
5533313
5533314
5533315
5533316
5533317
5533318
5533319
5533320
5533321
5533322
5533323
5533324
5533325
5533326
5533327
5533328
5533329
5533330
5533331
5533332
5533333
5533334
5533335
5533336
5533337
5533338
5533339
55333310
55333311
55333312
55333313
55333314
55333315
55333316
55333317
55333318
55333319
55333320
55333321
55333322
55333323
55333324
55333325
55333326
55333327
55333328
55333329
55333330
55333331
55333332
55333333
55333334
55333335
55333336
55333337
55333338
55333339
553333310
553333311
553333312
553333313
553333314
553333315
553333316
553333317
553333318
553333319
553333320
553333321
553333322
553333323
553333324
553333325
553333326
553333327
553333328
553333329
553333330
553333331
553333332
553333333
553333334
553333335
553333336
553333337
553333338
553333339
5533333310
5533333311
5533333312
5533333313
5533333314
5533333315
5533333316
5533333317
5533333318
5533333319
5533333320
5533333321
5533333322
5533333323
5533333324
5533333325
5533333326
5533333327
5533333328
5533333329
5533333330
5533333331
5533333332
5533333333
5533333334
5533333335
5533333336
5533333337
5533333338
5533333339
55333333310
55333333311
55333333312
55333333313
55333333314
55333333315
55333333316
55333333317
55333333318
55333333319
55333333320
55333333321
55333333322
55333333323
55333333324
55333333325
55333333326
55333333327
55333333328
55333333329
55333333330
55333333331
55333333332
55333333333
55333333334
55333333335
55333333336
55333333337
55333333338
55333333339
553333333310
553333333311
553333333312
553333333313
553333333314
553333333315
553333333316
553333333317
553333333318
553333333319
553333333320
553333333321
553333333322
553333333323
553333333324
553333333325
553333333326
553333333327
553333333328
553333333329
553333333330
553333333331
553333333332
553333333333
553333333334
553333333335
553333333336
553333333337
553333333338
553333333339
5533333333310
5533333333311
5533333333312
5533333333313
5533333333314
5533333333315
5533333333316
5533333333317
5533333333318
5533333333319
5533333333320
5533333333321
5533333333322
5533333333323
5533333333324
5533333333325
5533333333326
5533333333327
5533333333328
5533333333329
5533333333330
5533333333331
5533333333332
5533333333333
5533333333334
5533333333335
5533333333336
5533333333337
5533333333338
5533333333339
55333333333310
55333333333311
55333333333312
55333333333313
55333333333314
55333333333315
55333333333316
55333333333317
55333333333318
55333333333319
55333333333320
55333333333321
55333333333322
55333333333323
55333333333324
55333333333325
55333333333326
55333333333327
55333333333328
55333333333329
55333333333330
55333333333331
55333333333332
55333333333333
55333333333334
55333333333335
55333333333336
55333333333337
55333333333338
55333333333339
553333333333310
553333333333311
553333333333312
553333333333313
553333333333314
553333333333315
553333333333316
553333333333317
553333333333318
553333333333319
553333333333320
553333333333321
553333333333322
553333333333323
553333333333324
553333333333325
553333333333326
553333333333327
553333333333328
553333333333329
553333333333330
553333333333331
553333333333332
553333333333333
553333333333334
553333333333335
553333333333336
553333333333337
553333333333338
553333333333339
5533333333333310
5533333333333311
5533333333333312
5533333333333313
5533333333333314
5533333333333315
5533333333333316
5533333333333317
5533333333333318
5533333333333319
5533333333333320
5533333333333321
5533333333333322
5533333333333323
5533333333333324
5533333333333325
5533333333333326
5533333333333327
5533333333333328
5533333333333329
5533333333333330
5533333333333331
5533333333333332
5533333333333333
5533333333333334
5533333333333335
5533333333333336
5533333333333337
5533333333333338
5533333333333339
55333333333333310
55333333333333311
55333333333333312
55333333333333313
55333333333333314
55333333333333315
55333333333333316
55333333333333317
55333333333333318
55333333333333319
55333333333333320
55333333333333321
55333333333333322
55333333333333323
55333333333333324
55333333333333325
55333333333333326
55333333333333327
55333333333333328
55333333333333329
55333333333333330
55333333333333331
55333333333333332
55333333333333333
55333333333333334
55333333333333335
55333333333333336
55333333333333337
55333333333333338
55333333333333339
553333333333333310
553333333333333311
553333333333333312
553333333333333313
553333333333333314
553333333333333315
553333333333333316
553333333333333317
553333333333333318
553333333333333319
553333333333333320
553333333333333321
553333333333333322
553333333333333323
553333333333333324
553333333333333325
553333333333333326
553333333333333327
553333333333333328
553333333333333329
553333333333333330
553333333333333331
553333333333333332
553333333333333333
553333333333333334
553333333333333335
553333333333333336
553333333333333337
553333333333333338
553333333333333339
5533333333333333310
5533333333333333311
5533333333333333312
5533333333333333313
5533333333333333314
5533333333333333315
5533333333333333316
5533333333333333317
5533333333333333318
5533333333333333319
5533333333333333320
5533333333333333321
5533333333333333322
5533333333333333323
5533333333333333324
5533333333333333325
5533333333333333326
5533333333333333327
5533333333333333328
5533333333333333329
5533333333333333330
5533333333333333331
5533333333333333332
5533333333333333333
5533333333333333334
5533333333333333335
5533333333333333336
5533333333333333337
5533333333333333338
55

1 1.2 Plaintiffs allege Defendant has engaged in a systematic scheme of wage and hour
2 abuse against them and other similarly situated employees. These abuses include Defendant's
3 willful failure to pay such employees their earned wages for all time worked, including paying at
4 the correct pay rates in violation of Washington law and the Fair Labor Standards Act ("FLSA").

II. JURISDICTION AND VENUE

6 2.1 Jurisdiction. This court has federal question jurisdiction of the subject matter of
7 this action pursuant to 28 U.S.C. § 1331, as this case is brought under the laws of the United
8 States, specifically the FLSA, 29 U.S.C. § 201, *et seq.* The Court has supplemental jurisdiction
9 over Plaintiffs' state-law claims pursuant to 28 U.S.C. § 1337.

10 2.2 Venue. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391. The
11 events giving rise to Plaintiffs' claims occurred within this judicial district. Defendant has
12 conducted business and has employed workers in this judicial district. And Defendant resides in
13 this judicial district and is subject to personal jurisdiction here.

14 2.3 Governing Law. Plaintiffs assert claims under Washington State law on behalf of
15 a proposed Washington Class. Plaintiffs also assert claims on behalf of a proposed Collective
16 under the Fair Labor Standards Act.

III. PARTIES

18 3.1 Plaintiff Alphonsa Chandler. Plaintiff Chandler worked as an hourly paid
19 employee for Defendant from approximately April 11, 2019 to September 7, 2020. Plaintiff
20 performed work for Defendant in Washington.

21 3.2 Plaintiff Nicholas Gore. Plaintiff Gore worked as an hourly paid employee for
22 Defendant from approximately April 11, 2019 to July 11, 2020. Plaintiff performed work for
23 Defendant in Washington.

24 3.3 Plaintiff Brent Merity. Plaintiff Merity worked as an hourly paid employee for
25 Defendant from approximately April 11, 2019 to November 13, 2020. Plaintiff performed work
26 for Defendant in Washington.

1 3.4 Plaintiff Eric Vaughan. Plaintiff Vaughan worked as an hourly paid employee for
 2 Defendant from approximately July 23, 2019 to September 13, 2019. Plaintiff performed work
 3 for Defendant in Washington.

4 3.5 Defendant International Marine and Industrial Applicators LLC (“IMIA”).
 5 Defendant IMIA is a Florida Corporation. It does business throughout the country, including in
 6 and around Seattle, King County, Washington. Defendant IMIA is headquartered in Alabama,
 7 but has facilities throughout the nation, including in Bremerton, WA. Plaintiffs and the proposed
 8 Class worked for Defendant in Washington, including at its location in Bremerton.

9 3.6 In addition to Plaintiffs, Defendant has employed numerous other employees
 10 throughout the United States who, like Plaintiffs, are hourly, non-exempt workers, classified as
 11 travelers, who received a per diem payment, or are otherwise are similarly situated to Plaintiffs.

12 **IV. SUMMARY OF FACTUAL ALLEGATIONS**

13 4.1 Defendant boasts it “established as the premier Marine Preservation and
 14 Structural Services company in the United States,” with regional offices in every major U.S.
 15 Navy port across the country.

16 4.2 Defendant provides shipbuilders, ship repairers, and other commercial customers
 17 with various marine services from dock cleaners to mechanics to underwater welders, and
 18 everything in between.

19 4.3 Defendant estimates its employees providing these services total more than 200
 20 individuals working in Virginia, Washington, and Hawaii, with more than 100 of those
 21 individuals working as welders, 35 as shipfitters/pipefitters, and others in similar positions.

22 4.4 Class and Collective members were and are employed by Defendant and perform
 23 work materially similar to Plaintiffs.

24 4.5 Plaintiffs, Class, and Collective members report to shipyards, docks, barges, and
 25 boats under Defendant’s supervision and direction to perform their jobs, using materials and
 26 technology approved and supplied by Defendant.

27

1 4.6 Plaintiffs, Class, and Collective members are required to follow and abide by
 2 common work, pay, and overtime policies and procedures in the performance of their jobs.

3 4.7 At the end of each pay period, Plaintiffs, Class, and Collective members receive
 4 wage from Defendant that are determined by common systems and methods that Defendant
 5 selected and controlled.

6 4.8 Defendant has engaged in a common course of conduct of willfully failing to pay
 7 Plaintiff and Class members all wages earned, including willfully failing to pay such wages upon
 8 termination.

9 4.9 Defendant has engaged in a common course of conduct of willfully failing to
 10 properly pay Plaintiffs, Class, and Collective members for all time worked.

11 4.10 Defendant paid Plaintiffs, and Proposed Class and Collective members
 12 compensation in two forms: (1) an hourly rate of pay, and (2) per diem compensation.

13 4.11 Defendant's payment of per diem compensation was designed to compensate
 14 Plaintiffs, Class and Collective members for work performed and was not a true reimbursement
 15 for actual living and meal expenses.

16 4.12 Defendant's per diem payment was the same amount, regardless of living and
 17 meal expenses.

18 4.13 When Defendant calculated overtime rate, the Defendant did not include in that
 19 calculation any compensation paid as per diem. This resulted in a lower overtime rate of pay than
 20 permissible under Washington law and the FLSA.

21 4.14 Defendant hired Plaintiffs in 2019.

22 4.15 All Plaintiffs worked in excess of 40 hours in at least one workweek.

23 4.16 Defendant paid Plaintiffs an hourly rate and paid Plaintiffs a stipend to
 24 supplement their compensation.

25 4.17 When calculating the regular rate of pay, Defendant failed to include
 26 compensation earned through the stipend, and as a result, artificially and improperly paid
 27 Plaintiffs an overtime rate less than 1.5 times the actual rate of pay.

1 4.18 For example, Plaintiff Chandler worked 60 hours during the workweek beginning
 2 March 16, 2020 and ending March 22, 2020. Defendant paid him \$29 per hour, plus per diem
 3 compensation in the amount of \$846, for a regular rate of \$50.15. But Defendant paid Plaintiff
 4 Chandler an overtime rate of just \$43.50 per hour. Defendant therefore failed to pay Plaintiff one
 5 and one-half times his actual regular rate of pay for the hours he worked in excess of forty for
 6 that workweek.

7 4.19 As another example, Plaintiff Gore worked 58 hours during the workweek of
 8 December 9, 2019 to December 15, 2019. Defendant paid him \$26.75 per hour, plus per diem
 9 compensation in the amount of \$846, for a regular rate of \$47.90. Defendant paid an overtime
 10 rate of just \$40.12 for the 18 hours of overtime work, which was less than one and one-half times
 11 Plaintiff Gore's regular rate of pay for the hours he worked in excess of forty for that workweek.

12 4.20 Defendant also did not properly pay overtime compensation to Plaintiff Merity.
 13 As one example, Plaintiff Merity worked 56 hours during the workweek from May 4, 2020 to
 14 May 10, 2020. Defendant paid him \$29.25 per hour, plus per diem compensation in the amount
 15 of \$705, for a regular rate of \$46.88. But Defendant paid Plaintiff Merity an overtime rate of just
 16 \$43.87 per hour for the 16 hours of overtime work. Defendant therefore did not pay him one and
 17 one-half times his actual regular rate of pay for the hours he worked in excess of forty for that
 18 workweek.

19 4.21 And finally, Plaintiff Vaughan worked 58 hours during the workweek beginning
 20 August 19, 2019 and ending August 25, 2019. Defendant paid him \$26.75 per hour, plus per
 21 diem compensation totaling \$846, for a regular rate of \$47.90. Defendant paid Plaintiff Vaughan
 22 an overtime rate of just \$40.12 for the 18 hours of overtime work, which was less than one and
 23 one-half times his regular rate of pay for the hours he worked in excess of forty for that
 24 workweek.

25 4.22 Each Class member worked more than forty hours in at least one workweek
 26 during the three years before this Complaint was filed.

27
 FIRST AMENDED CLASS AND COLLECTIVE ACTION
 COMPLAINT FOR DAMAGES - 5
 CASE NO. 2:22-cv-00339-BJR

REKHI & WOLK, P.S.
 529 Warreb Avenue N., Suite 201
 Seattle, Washington 98109
 TEL. 206.388.5887 • FAX 206.557.3924

1 4.23 Each Collective member worked more than forty hours in at least one workweek
2 during the three years before this Complaint was filed.

3 4.24 When Plaintiffs, Class, and Collective members worked more than forty hours in
4 a workweek, Defendant failed to pay them one and one-half times their actual regular rate for the
5 hours worked in excess of forty for that workweek.

6 4.25 Defendant's method of paying Plaintiffs, Class, and Collective members was
7 willful, and they cannot demonstrate a good faith basis as to the belief that their conduct of
8 underpaying wages complied with either Washington law or the FLSA.

V. CLASS ACTION ALLEGATIONS

10 5.1 Class Definition: Under Civil Rule 23(a) and (b)(3), Plaintiffs bring this case as a
11 class action against Defendant on behalf of a Class defined as follows:

12 All persons who are hourly workers, classified as travelers,
13 who worked for Defendant in Washington State who
14 received a per diem payment at any time from February 18,
2019 to 90 days before the date of final disposition of this
action.

15 Excluded from the Class are any entity in which Defendant has a controlling interest or
16 that has a controlling interest in Defendant, and Defendant's legal representatives, assignees, and
17 successors. Also excluded are the Judge to whom this case is assigned and any member of the
18 Judge's immediate family.

19 5.2 Numerosity. Plaintiffs believes that more than forty persons who fall within the
20 Class definition set forth in para. 5.1. These Class members are so numerous that joinder of them
21 is impracticable. Moreover, the disposition of the claims of the Class in a single action will
22 provide substantial benefits to all parties and the Court.

23 5.3 Commonality. There are numerous questions of law and fact common to Plaintiffs
24 and Class members. These questions include, but are not limited to, the following:

a. Whether Defendant has engaged in a common course of failing to properly compensate Plaintiffs and Class members for all time worked;

- b. Whether Defendant has engaged in a common course of failing to properly compensate Plaintiffs and Class members for all time worked in excess of forty hours per week;
- c. Whether Defendants have violated RCW 49.46.090;
- d. Whether Defendants have violated RCW 49.46.120;
- e. Whether Defendants have violated RCW 49.46.130;
- f. Whether Defendants have violated RCW 49.48.010;
- g. Whether Defendants have violated RCW 49.52.050;
- h. Whether Defendants have violated RCW 49.52.060; and
- i. The nature and extent of Class-wide injury and the measure of compensation for such injury.

5.4 Typicality. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs worked in Washington for Defendant and performed work for it in Washington. Plaintiffs' claims, like the claims of the Class, arise out of the same common courses of conduct by Defendant and are based on the same legal and remedial theories.

5.5 Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained competent and capable attorneys who have significant experience in complex and class action litigation, including employment law. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class. Neither Plaintiffs nor their counsel have interests that are contrary to or that conflict with those of the Class.

5.6 Predominance. Defendant has engaged in a common course of wage and hour abuse toward Plaintiffs and members of the Class. The common issues arising from this conduct that affects Plaintiffs and members of the Class predominate over any individual issues. Adjudication of these common issues in a single action has important and desirable advantages of judicial economy.

5.7 Superiority. Plaintiffs and Class members have suffered and will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful conduct. Absent a class action, however, most Class members likely would find the cost of litigating their claims

1 prohibitive. Class treatment is superior to multiple individual suits or piecemeal litigation
 2 because it conserves judicial resources, promotes consistency and efficiency of adjudication,
 3 provides a forum for small claimants, and deters illegal activities. There will be no significant
 4 difficulty in the management of this case as a class action. The Class members are readily
 5 identifiable from Defendant's records.

6 VI. FLSA COLLECTIVE ACTION ALLEGATIONS

7 6.1 Plaintiffs bring this Complaint as a collective action pursuant to 29 U.S.C. §
 8 216(b) on behalf of the following class of individuals:

9 All persons who are hourly workers, classified as travelers,
 10 who worked for Defendant anywhere in the United States
 11 who received a per diem payment at any time from February
 18, 2019 to 90 days before the date of final disposition of
 12 this action.

13 6.2 Defendant has not compensated these employees for overtime work at one and
 one-and-a-half times their actual regular rate for the hours worked in excess of forty for that
 14 workweek.

15 6.3 Per 29 U.S.C. § 216(b), this action may be brought as an "opt-in" collective action
 16 for the claims asserted by Plaintiffs because their claims are similar to the claims possessed by
 17 the Collective members.

18 6.4 Plaintiffs also have actual knowledge that Collective members have not been
 compensated for overtime work at one and one-and-a-half times their actual regular rate for the hours
 20 worked in excess of forty for that workweek.

21 6.5 Plaintiffs are similarly situated to Collective members. Like Plaintiffs, Defendant
 22 subjected Collective members to its common practice, policy, or plan of refusing to pay proper
 23 overtime compensation in violation of the FLSA.

24 6.6 Collective members perform or have performed the same or similar work as
 25 Plaintiffs, providing marine services to Defendant's customers.

1 6.7 Collective members regularly work or have worked in excess of forty hours
 2 during a workweek.

3 6.8 Collective members are not exempt from receiving overtime compensation under
 4 the FLSA.

5 6.9 Defendant's failure to pay overtime compensation as required by the FLSA
 6 resulted from generally applicable policies and practices, and did not depend on the personal
 7 circumstances of FLSA Collective members.

8 6.10 Although Plaintiffs and Collective members have different job titles and/or work
 9 in different locations, this action may be properly maintained as a collective action on behalf of
 10 the defined Collective because, throughout the relevant time period:

- 11 a. Defendant maintained common timekeeping systems and policies with respect
 12 to Plaintiffs and Collective members; and
- 13 b. Defendant maintained common payroll systems and policies with respect to
 14 Plaintiffs and Collective members, controlled the payroll systems and policies
 15 applied to Plaintiffs and Collective members, and set the pay rates assigned to
 16 Plaintiffs and Collective members.

17 6.11 Plaintiffs and Collective members' claims arise from a common nucleus of
 18 operative facts; namely, the continued and willful failure of Defendant to comply with their
 19 obligation to legally compensation their employees. Liability is based on a systematic course of
 20 wrongful conduct by Defendant that cause harm to all Collective members. Defendant had a
 21 policy, practice, or plan of not pay Plaintiffs and Collective members one and one-half their
 22 actual regular rate of pay for all hours worked in excess of 40 in a workweek.

23 6.12 As such, the collective of similarly situated Plaintiffs is properly defined as stated
 24 above. Plaintiffs estimate the Collective, including both current and former employees over the
 25 relevant time period, will include upwards of 400 people or more. The precise number of
 26 Collective members should be readily available from Defendant's personnel, scheduling, time
 27 and payroll records, and from input received from Collective members as part of the notice and

1 “opt-in” process provided by 29 U.S.C. § 216(b). The names and addresses of the Collective
 2 members are discoverable from Defendant’s records. Given the composition and size of the
 3 Collective, notice may be provided via First Class Mail, e-mail, text message, and other modes
 4 of notice similar to those customarily used in representative actions.

5

VII. FIRST CLAIM FOR RELIEF
 6 **(Violation of RCW 49.46 et seq., Payment of Wages Less than Entitled)**
On Behalf of Plaintiffs and the Class

7.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
 8 in the preceding paragraphs.

7.2 Defendants have failed to properly pay wages to Plaintiffs and Class members for
 10 the work they performed in excess of forty hours per week as per RCW 49.46.130.

7.3 By the actions alleged above, Defendants have violated the provisions of RCW 26
 12 49.46.020, RCW 49.46.090, RCW 49.46.120, RCW 49.46.130.

7.4 As a result of these unlawful acts, Plaintiffs and the Class have been deprived of
 14 compensation in amounts to be determined at trial, and Plaintiff and the Class are entitled to the
 15 recovery of such damages, including interest thereon, as well as attorneys’ fees and costs
 16 pursuant to RCW 49.46.090.

7

VIII. SECOND CLAIM FOR RELIEF
 18 **(Unpaid Wages on Termination: RCW 49.48 et seq.)**
On Behalf of Plaintiffs and the Class

8.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
 20 in the preceding paragraphs.

8.2 RCW 49.48.010 provides that “when any employee shall cease to work for an
 22 employer, whether by discharge or by voluntary withdrawal, the wages due him on account of
 23 his employment shall be paid to him at the end of the established pay period.” The statute further
 24 states that it shall be unlawful for “any employer to withhold or divert any portion of an
 25 employee’s wages.”

1 8.3 By the actions alleged above, Defendant violated the provisions of RCW
 2 49.48.010. As a result of Defendant's unlawful acts, Plaintiffs and the Class have been deprived
 3 of compensation in amounts to be determined at trial. Pursuant to RCW 49.48.030 are entitled to
 4 recover of such amounts, including interest thereon, attorneys' fees, and costs.

5 **IX. THIRD CLAIM FOR RELIEF**
 6 **(Violation of RCW 49.52.050 — Willful Refusal to Pay Wages)**
 7 **On Behalf of Plaintiffs and the Class**

8 9.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth
 in the preceding paragraphs.

9 9.2 RCW 49.52.050 provides that any employer or officer, vice principal or agent of
 10 any employer who, “[w]ilfully and with intent to deprive the employee of any party of her
 11 wages, shall pay any employee a lower wage than the wage such employer is obligated to pay
 12 such employee by any statute, ordinance, or contract” shall be guilty of a misdemeanor.

13 9.3 RCW 49.52.070 provides that any employer who violates the provisions of RCW
 14 49.52.050 shall be liable in a civil action for twice the amount of wages withheld, attorneys' fees,
 15 and costs.

16 9.4 The alleged unlawful actions by Defendant against Plaintiffs and the Class, as set
 17 forth above, were committed willfully and with intent to deprive Plaintiffs and the Class of part
 18 of their wages.

19 9.5 As such, based on the above allegations, Defendant violated the provisions of
 20 RCW 49.52.050.

21 9.6 As a result of the willful, unlawful acts of Defendant, Plaintiff and the Class have
 22 been deprived of compensation in amounts to be determined at trial and pursuant to RCW
 23 49.52.070, Plaintiff and the Class are entitled to recovery of twice such damages, including
 24 interest thereon, as well as attorneys' fees and costs.

X. FOURTH CLAIM FOR RELIEF
(Violations of 29 U.S.C. § 207 for failure to pay overtime compensation)
On Behalf of Plaintiff and the Collective

10.1 Plaintiffs reallege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

10.2 At all material times, Defendant has been an employer within the meaning of the FLSA under 29 U.S.C. § 203(d).

10.3 At all material times, Defendant has been an enterprise within the meaning of the FLSA under 29 U.S.C. § 203(r)-(s).

10.4 Defendant has and continues to have an annual gross business volume of not less than \$500,000.

10.5 Plaintiffs and Collective Members were and are employees of Defendant within the meaning of 29 U.S.C. § 203(e).

10.6 At all material times, Plaintiffs and Collective members were employees who engaged in commerce as required by 29 U.S.C. § 207.

10.7 Plaintiff and Collective members, Defendant's employees, are similarly situated individuals within the meaning of the FLSA, 29 U.S.C. § 216(b).

10.8 The FLSA requires each covered employer to compensate all non-exempt employees at a rate of not less than one and one-half times their regular hourly rate for all hours worked in excess of forty hours per week.

10.9 Defendant violated and continues to violate 29 U.S.C. § 207 by failing to compensate Plaintiffs and Collective members at one and one-half time their actual regular rate for all hours worked in excess of forty hours per workweek.

10.10 Because of these violations, Plaintiffs and Collective members have suffered a loss of wages.

10.11 Defendant's failure to pay overtime to Plaintiffs and Collective members, in violation of the FLSA, was willful and not based on a good faith belief that their conduct did not violate the FLSA. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA

1 within the meaning of 29 U.S.C. § 255(a). Accordingly, a three-year limitations period should
2 apply to Plaintiffs and Collective members' claims.

3 10.12 Because of Defendant's willful violations, Plaintiffs and Collective members are
4 also due an additional equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b).

5 10.13 Plaintiffs and Collective members are further entitled to reasonable attorneys' fees
6 and costs of the action in addition to any judgment awarded.

XI. PRAYER FOR RELIEF

8 WHEREFORE, Plaintiffs, on their own and on behalf of the members of the Class and
9 Collective, pray for judgment against Defendant, as follows:

10 A. An order designating this action as a collective action on behalf of the Collective
11 and issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals;

12 B. An order certifying the proposed Class;

13 C. Appointment of Plaintiffs as representatives of the Class and Collective;

14 D. Appointment of the undersigned attorneys as counsel for the Class and Collective;

15 E. Award compensatory, liquidated, and exemplary damages to Plaintiffs and Class

16 members for violation of Washington's wage and hour laws, in amounts to be proven at trial;

17 F. Award compensatory, liquidated, and exemplary damages to Plaintiffs and

18 Collective members for violations of the FLSA, in amounts to be proven at trial;

19 G. Award Plaintiffs and the Class attorneys' fees and costs, as allowed by law;

20 H. Award Plaintiffs and the Class prejudgment and post-judgment interest, as

21 | provided by law;

22 I. Permit Plaintiffs and the Class leave to amend the complaint to conform to the
23 evidence presented at trial; and

24 J. Grant such other and further relief as the Court deems necessary, just, and proper.

25

26

27

FIRST AMENDED CLASS AND COLLECTIVE ACTION
COMPLAINT FOR DAMAGES - 13
CASE NO. 2:22-cv-00339-BJR

REKHI & WOLK, P.S.
529 Warreb Avenue N., Suite 201
Seattle, Washington 98109
TEL. 206 388 5887 • FAX 206 557 3924

1 RESPECTFULLY SUBMITTED AND DATED this 19th day of April, 2022.
2

3 REKHI & WOLK, P.S.
4

5 By: /s/ Hardeep S. Rekhi, WSBA #28946
6

7 Hardeep S. Rekhi, WSBA #34579
8 Email: hardeep@rekhiwolk.com
9 Gregory A. Wolk, WSBA #28946
10 Email: jennifer@rekhiwolk.com
11 Jennifer T. Song, WSBA #39801
12 Email: jennifer@rekhiwolk.com
13 529 Warren Ave North, Suite 201
14 Seattle, Washington 98109
15 Telephone: (206) 388-5887
16 Facsimile: (206) 557-3924

17 TERRELL MARSHALL LAW GROUP PLLC
18

19 By: /s/Erika L. Nusser, WSBA #40854
20

21 Toby J. Marshall, WSBA #32726
22 Email: tmarshall@terrellmarshall.com
23 Erika L. Nusser, WSBA #40854
24 Email: enusser@terrellmarshall.com
25 936 North 34th Street, Suite 300
26 Seattle, Washington 98103
27 Telephone: (206) 816-6603
Facsimile: (206) 319-5450

28 *Attorneys for Plaintiffs*
29